

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 06-CR-12

-vs-

HORACIO MONTOKA,

Defendant.

ORDER

Before the Court is the defendant, Horacio Montoya's ("Montoya"), objection to the Magistrate Judge's Recommendation that Montoya's Motion to Suppress Evidence be denied. The Court has reviewed the file, the briefs, and other pertinent materials relating to the objection and rules as follows.

The Court adopts the ruling of the Magistrate Judge that Montoya granted Officer Thomas Obregon the right to search his premises. Montoya argues primarily that the Magistrate Judge while finding that Montoya gave consent for Officer Obregon to search the premises, failed to make a separate finding that Officer Obregon specifically asked for and Montoya granted permission to enter the premises. Montoya relies upon *United States v. Shaibu*, 920 F.2d 1423, 1428 (9th Cir. 1990) which states that "in absence of a specific request by police for permission to enter a home, a defendant's failure to object to such entry is not sufficient to establish free and voluntary consent."

The Court having accepted Magistrate Judge Gorence's conclusion that Montoya consented to the search of the residence, finds that Montoya's consent to search necessarily and

logically includes the consent to enter. Placing any other interpretation on these facts creates a strained analysis. The consent to search subsumes the consent to enter and therefore no separate finding by the Magistrate Judge was necessary.

Montoya's objection is denied and the Magistrate Judge's recommendation is accepted by the Court.

Dated at Milwaukee, Wisconsin, this 5th day of May, 2006.

SO ORDERED,

s/ Rudolph T. Randa
HON. RUDOLPH T. RANDA
Chief Judge